*THE HON'BLE SRI JUSTICE P.S. NARAYANA

+W.P.No.21087 OF 2007

% 11-10-2007

N.Hanumantha Rao. .. PETITIONER

Versus

$ 1. Commissioner, Endowments
Department, Govt. of A.P.,
at Hyderabad and 2 others. .. RESPONDENTS

<GIST:

>HEAD NOTE:

! Counsel for petitioner : Sri P.Venugopal

^ Counsel for respondents 1 to 3: G.P. FOR ENDOWMENTS

Counsel for respondents 4 to 8: Sri M.Vidya Sagar

?CASES REFERRED :

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HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION No.21087 of 2007

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Date: October 11, 2007

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Between:

N.Hanumantha Rao. … Petitioner

And

1. Commissioner, Endowments
Department, Govt. of A.P.,
at Hyderabad and 2 others. … Respondents

* * *

ORDER:

This Court ordered notice before admission on 06.10.2007. Counter-affidavit is filed by the third respondent.

2. The writ petition is filed for a writ of *Mandamus* declaring action of the respondents in constituting Trust Board for the Hanuman Temple, Laxminagar, Picket, Secunderabad, in terms of proceedings in Notice No.B/1649/07, dated 13.9.2007 issued by the third respondent, without passing any order on the declaration of right of the petitioner and his family members as hereditary trustees and when the original application filed by the petitioner is pending before the second respondent, as illegal, arbitrary, violative of principles of natural justice and contrary to provisions of Act 30 of 1987 and consequently direct the respondents not to constitute Trust Board for the said temple and pass such other suitable orders.

3. It is stated that the deceased father of writ petitioner late N.Venkataswamy got constructed Lord Hanuman Temple and performed 'prathishta' of Lord Hanuman by incurring expenditure from his own funds, in the land donated by one Sri Akula Narayana. The deceased father of the petitioner also raised a platform in the year 1958 and constructed Gharbalayam in the year 1960 with his own funds. He also purchased land admeasuring 388 sq. yards in plot No.6 in survey No.26 in the year 1975 for extension of the temple by incurring expenditure from his own funds. It is stated that after the said temple was constructed, several devotees started coming to the temple and eventually the temple had been taken over by the Endowments Department under the provisions of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966 (hereinafter in short referred to as 'the Act' for the purpose of

convenience), and the same was registered as Sec.6 (c) temple with the Endowments Department. Further it is stated that the deceased father of the writ petitioner, being the founder of the temple, till his demise in the year 1994 he was the hereditary trustee of the said temple and the second respondent had declared him as hereditary trustee by order dated 03.9.1980 under Section 40 read with Section 77 of the said Act. It is also stated that the father of the petitioner, being hereditary trustee, till his demise was acting as the Chairman of the Trust Board of the said temple and after his demise in the year 1994, the petitioner had been looking after the affairs of the temple, despite the fact that the Department had not constituted Trust Board from 1994 till date. After the judgment of the Supreme Court, they filed a petition dated 10.9.2007 before the third respondent to declare the petitioner and his family members as hereditary trustees of his deceased father and also appoint the petitioner as the Chairman of the Trust Board of the said temple. Even before filing of the said petition, on 30.6.2007, when the father of the petitioner was alive, his father brought to the notice of the third respondent about his legal heirs i.e., the petitioner and his brothers and requested to consider them for nominating as hereditary trustees after him. It is also stated that on coming to know that first respondent issued notice dated 13.9.2007 to constitute Trust Board, they got issued a lawyer notice and the third respondent issued a vague reply to the same on 18.9.2007, which was contrary to law as laid down by the Apex Court. The third respondent by proceeding dated 18.9.2007 had rejected their application by stating that after the demise of petitioner's deceased father, no one was declared as his successor to Hanuman Temple as per the provisions of Endowments Act 30 of 1987 when petitioner's father had already declared them as his legal representatives by letter dated 30.6.1987. Even before issuing the letter dated 18.9.2007 to the advocate of the petitioner, the third respondent had issued a notice on 13.9.2007 whereby he stated that the Trust Board would be constituted

and invited applications for trusteeship in Form No.II of Rules under Section 17(3) of the Act. It is also stated that be that as it may, the petitioner's had filed original application before the second respondent questioning the order of the first respondent dated 13.9.2007 in proceeding to constitute Trust Board for the temple and also filed I.A. seeking indulgence of the second respondent to direct the first respondent not to proceed with the constitution of the trust pursuant to the notice issued by the first respondent dated 13.9.2007 and the same are pending before the second respondent. It is further stated that once his father had given a letter on 30.6.1987 stating about his legal heirs, it is not open to the first respondent to state that no one was declared as successor to the father of the petitioner under the said Act. It is further stated that by virtue of the proceedings dated 13.9.2007 any time a Trust Board is constituted for the said temple and in case if it is allowed to be done, it would be contrary to the law laid down by the Supreme Court as there would be no person in the trust board from the family of founder hereditary trustee. It is also stated that the petitioner and his family members are maintaining the said temple with their money and there was no hundi placed in the temple till date.

4. In the counter-affidavit filed by R-3 it is stated that there was abolition of hereditary trusteeship as per Section 16 of the Act 30 of 1987 after the old Act 17/1996 was repealed, therefore the petitioner cannot claim that he was son of hereditary trustee. The Act 30 of 1987 came into force with effect from 28.5.1987, whereas the petitioner's deceased father expired on 7.8.1994. Thus, the deceased father of the petitioner had to get himself declared as founder trustee on the basis of his previous order, which failed to do so. It is also stated that the petitioner's deceased father managed the temple upto 1994 as *de facto* trustee till his death, still he cannot be called hereditary trustee at all. The petition itself is not tenable as there were no hereditary trusteeship declarations, the question of appointing the petitioner, as

Chairman does not arise. The petitioner ought to have approached the competent authority for necessary declarations, which he had not done. It is also stated that the office of the Assistant Commissioner had no record to answer what action was taken on the so called petition dated 30.6.1987. When the deceased himself failed to obtain declaration as founder trustee as per Sections 15 and 87 of the Act 30 of 1987 and the rules made thereunder during or after 1987 upto the date he took his last breath in 1994, the question of recognizing the deceased's son and his grandsons as trustees does not arise. It is also further stated that the action of the respondent No.3 in issuing notification for constitution of Trust Board was as per law. The Trust Board, which was constituted by the respondent No.3, was as per the powers vested in him under Section 15 (3) of the Act 30 of 1987. Further it is stated that the petitioner filed O.A. to declare him as hereditary trustee and sons and grandsons as founder members. In the first instance, the petitioner's father had not been recognized as founder family member, so the question of other members being recognized as such does not arise. It is further submitted that even it was presumed that his request was not considered in stopping the constitution of Trust Board by the respondent No.3, the petitioner ought to have approached the next forum and challenged the notification issued by the respondent No.3 before the Endowment authorities instead of directly approaching this court without exhausting the remedy provided to him under the provisions of the Act 30 of 1987. There was no breach of principles of natural justice and the action taken by the respondent No.3 in constituting the Trust Board was as per powers vested in him under Section 15(3) of the Act 30 of 1987 and not arbitrary, violative of Article 14 of the Constitution of India. It is also stated that in view of the facts submitted above, the orders of the respondent No.3 in Rc.No.B/1649/07, dated 13.9.2007 was good at law. Respondent No.3 had no knowledge of the O.A. said to have been filed before respondent No.2 for declaring them as hereditary

trustee nor there was any direction by the respondent No.2 to respondent No.3 for not to proceed further in constituting Trust Board to the petitioner's temple. Moreover, proceedings had already issued constituting Trust Board to the temple under Section 15 (3) of the Act 30 of 1987 consisting 5 members and mere filing an O.A. would not entitle the petitioner to seek a right of appointment as Chairman.

5. In the affidavit filed in support of the implead application several facts had been narrated and it is stated that these respondents had been appointed as non-hereditary trustees by the proceedings of the Assistant Commissioner, third respondent, dated 04.10.2007 to Sri Hanuman Temple, Lakshmi Nagar. Several further other facts had been narrated in the said affidavit.

6. It is needless to say that the Assistant Commissioner, Endowments is not competent to decide this question relating to hereditary trustee of the founder family. It is needless to say that concerned Deputy Commissioner, Endowments, alone would be competent. The petitioner is at liberty to make appropriate application before the competent Deputy Commissioner, Endowments and let the concerned Deputy Commissioner, Endowments, decide the said matter in accordance with law. It is also made clear that the petitioner is at liberty to question the subsequent events if the petitioner is so advised.

7. Accordingly, the writ petition is disposed of. No order as to costs.

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(P.S. NARAYANA, J)

Date: October 11, 2007.
BSB

L.R. Copy to be marked.